

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CLINTON BROWN,)	NO. 2:22-cv-09203-MEMF-KS
)	
Plaintiff,)	REPORT AND RECOMMENDATION OF
v.)	UNITED STATES MAGISTRATE JUDGE
)	
CLARK R. TAYLOR,)	
)	
Defendant.)	
)	

This Report and Recommendation is submitted to the Honorable Maame Ewusi-Mensah Frimpong, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

INTRODUCTION

On December 17, 2022, Plaintiff, a California state resident proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983 (the “Complaint”) concerning the denial of Plaintiff’s application for a 20-megawatt solar farm at a property located in Calabasas, California. (Dkt. No. 1 at 3.) On January 30, 2023, Defendant Clark R. Taylor – a certified planner with the Los Angeles County Department of Regional Planning – filed an Answer to the Complaint. (Dkt. No. 10.)

1 On February 21, 2023, the Court issued a Case Management and Scheduling Order in
2 Civil Rights Cases (“CMO”), which provided that, on or before June 21, 2023 (i.e. 120 days
3 from the issuance of the CMO), the parties were to file status reports that included “a statement
4 informing the Court whether other parties will be added or amended pleadings will be filed
5 and, if so, a proposed deadline by which those steps will be taken.” (Dkt. No. 26 at 4.) On
6 July 10, 2023, Plaintiff filed a status report in which he erroneously attempted to “reserve[] the
7 right to file a supplemental or amended pleading against the Defendant in their personal
8 capacity” but did not express any intention to file an amended pleading. (Dkt. No. 60 at 2-3.)
9

10 On October 18, 2023, Defendant filed a Motion for Summary Judgment. (Dkt. No. 84.)
11 After the Motion for Summary Judgment was fully briefed and ready for decision, the
12 undersigned Chief Magistrate Judge issued a Report recommending that the Motion for
13 Summary Judgment be granted and this case dismissed with prejudice. (Dkt. No. 165.)
14

15 Before the Court is Plaintiff’s Motion for Leave to Amend Complaint (“Motion to
16 Amend”), filed while the Motion for Summary judgment was pending on February 3, 2025.
17 (Dkt. No. 189.) On March 5, 2025, Defendant filed an Opposition to the Motion to Amend.
18 (Dkt. No. 194.) On March 12, 2025, Plaintiff filed his Reply. (Dkt. No. 196.)
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20 On March 27, 2025, the presiding District Judge accepted the Report and granted
21 summary judgment in full but delayed entering judgment in this case “until the Motion to
22 Amend is decided.” (Dkt. No. 198 at 5.)
23

24 Briefing on the Motion to Amend is now complete. The Court finds that the Motion to
25 Amend is suitable for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-
26 15. The Motion to Amend is now submitted for decision.
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1 **THE PARTIES' ARGUMENTS**

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3 **I. Plaintiff's Motion to Amend**

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5 The current Complaint brings a single claim challenging the denial of a solar application
6 on the subject property on the grounds that the application denial constituted a constitutional
7 taking. (Dkt. No. 1 at 5-7.) In the proposed amended complaint, Plaintiff raises the same claim
8 but adds new facts – in addition to the denial of the solar application – that contributed to
9 Defendant's alleged violation of the Fifth Amendment's Takings Clause in this case. (Dkt. No.
10 189-1 at 5-9.)

11
12 In the Motion to Amend, Plaintiff "seeks leave to amend his Complaint pursuant to Fed.
13 R. Civ. P. 15(a)(2)." (Dkt. No. 189 at 1.) He does so on the ground that "[i]t has become
14 undeniably clear that Plaintiff must assert a *per se* Taking rather than just challenging the denial
15 of the solar farm permit alone," (*Id.*) More specifically, Plaintiff accuses Defendant of
16 denying Plaintiff permits "to build housing on the property, while a previous owner was granted
17 a permit to remove 8,431 tons of dirt." (*Id.* at 2-3.) These new facts allegedly "demonstrate[]
18 a clear inconsistency in the Government's regulatory decisions – permitting major alterations
19 to the land in the past while now categorically denying all economically viable use of the
20 property to the Plaintiff." (*Id.* at 3.) Additionally, Plaintiff argues that Defendant's actions
21 "are unrelated to public health, safety, or morals and have effectively denied Plaintiff all
22 economic use of the property." (*Id.*)

23
24 Plaintiff also complains that the "Government's delay tactics and procedural
25 maneuvering" have delayed this case such that no discovery has been ordered to date, and so
26 "the record remains artificially constrained, and the Complaint is now outdated." (*Id.* at 1.)

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1 Plaintiff further contends that “[t]he most urgent reason for amendment is to preserve
2 the integrity of the Plaintiff’s claim and ensure the Complaint reflects the Government’s
3 ongoing Takings Clause violations.” (*Id.* at 2.)
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5 **II. Defendant’s Opposition**
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7 In the Opposition, Defendant argues that the Motion to Amend should be denied because
8 it was filed without forewarning, in violation of this Court’s meet-and-confer requirements set
9 forth in Local Rule 7-3. (Dkt. No. 194 at 2-3.) Additionally, Defendant argues that the Motion
10 to Amend is meritless because it “fails to provide any evidence which would support Plaintiff’s
11 argument that granting leave to amend serves both justice and judicial efficiency.” (*Id.*)
12 Defendant contends that the claim Plaintiff seeks to raise by amendment is not materially
13 different from the pending claim, thus, rendering amendment futile. (*Id.* at 2-5.) Defendant
14 maintains that Plaintiff already alleges that a *per se* taking occurred in the pending Complaint.
15 (*Id.* at 2.)
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17 **III. Plaintiff’s Reply**
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19 In the Reply, Plaintiff argues that any procedural misstep in failing to hold a pre-motion
20 meet and confer is not grounds to deny amendment, and that the amendment will not prejudice
21 Defendant. (Dkt. No. 196.)
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LEGAL STANDARD

Under the Federal Rules of Civil Procedure relevant to this matter, “a party may amend its pleading only with the opposing party’s written consent¹ or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

“When considering whether to grant leave to amend, a district court should consider several factors including undue delay, the movant’s bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party, and futility.” *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). Of these “*Foman* factors,” prejudice to the opposing party carries the most weight. *Brown*, 953 F.3d at 574. However, “[f]utility of amendment can, by itself, justify the denial of a motion for leave to amend.” *Hooper v. Shinn*, 985 F.3d 594, 622 (9th Cir. 2021) (quoting *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)).

DISCUSSION

I. Delay

Plaintiff fails to make an argument in the Motion to Amend addressing delay concerning the expanded claim he seeks to raise in his amended pleading. Defendant also does not specifically argue that the proposed amendment was unduly delayed, but more generally argues that the Motion to Amend is one in a series of “vexatious and frivolous” filings in this action that “create an unnecessary burden on the time and resource of this Court and Defendants.” (Dkt. No. 194 at 5.)

¹ Here, the opposing party has not given his written consent but has, instead, opposed amendment. (Dkt. No. 194.)

1 “Relevant to evaluating the delay issue is whether the moving party knew or should have
2 known the facts and theories raised by the amendment in the original pleading.” *Jackson v.*
3 *Bank of Hawaii*, 902 F.2d 1385, 1388 (9th Cir. 1990); *see also Acri v. International Ass’n of*
4 *Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986) (“[L]ate amendments
5 to assert new theories are not reviewed favorably when the facts and the theory have been
6 known to the party seeking amendment since the inception of the cause of action.”); *Murphy v.*
7 *American General Life Ins. Co.*, 74 F. Supp. 3d 1267, 1284 (C.D. Cal. 2015).

8
9 Here, Plaintiff raises several new allegations in the proposed amended complaint
10 concerning additional restrictions Defendant allegedly placed on the property at issue. (Dkt.
11 No. 189-1 at 5-7 ¶¶ 29-55.) But, Plaintiff has proffered his amended pleading *years* after the
12 Court ordered him to “inform[] the Court whether other parties will be added or amended
13 pleadings will be filed and, if so, a proposed deadline by which those steps will be taken.”
14 (Dkt. No. 26 at 4.) Additionally, Plaintiff’s proposed amendments to the original Complaint
15 fail to allege *when* Defendant “denied the Plaintiff a permit to reside on his property,”
16 “reject[ed] the 200-home subdivision and declared its decision final without a public hearing
17 or any opportunity for appeal,” or imposed the numerous “restrictions and punitive measures”
18 alleged. (Dkt. No. 189-1 at 5-7 ¶¶ 29-55.)

19
20 Indeed, aside from the allegations concerning the denial of Plaintiff’s solar farm
21 application – an issue for which summary judgment has already been granted (dkt. no. 198),
22 the only allegation in the proposed amended complaint with any date connected to it is
23 Plaintiff’s reference to Defendant “implementing the June 3, 2021 [Significant Ecological
24 Areas] overlay.” (Dkt. no. 189-1 at 4 ¶ 23.) That action occurred approximately a year and a
25 half before Plaintiff filed this lawsuit. *Jackson*, 902 F.2d at 1388.

26
27 Consequently, the Court finds undue delay here. *Acri*, 781 F.2d at 1398; *see also*
28 *Kowalow v. Correctional Services Corp.*, 35 F. App’x 344, 346-47 (9th Cir. 2002) (affirming

1 the denial of a motion to amend in part for undue delay where “[Plaintiff] fails to point to any
2 newly discovered facts that would support the late amendment.”); *Lockheed Martin Corp. v.*
3 *Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (motion to amend was unduly
4 delayed where *inter alia* it “came several months after the stipulated deadline for amending or
5 supplementing the complaint” and “[n]othing in the proposed amended complaint relied on
6 facts that were unavailable before the stipulated deadline.”).

7 8 **II. Bad Faith/Dilatory Motive**

9
10 A motion to amend may not be used to circumvent summary judgment. *See Acri*, 781
11 F.2d at 1398-99 (affirming the denial of a motion to amend where “[t]he district court found
12 that plaintiffs’ motion to amend was brought to avoid the possibility of an adverse summary
13 judgment ruling, and that allowing amendment would prejudice the [defendant] because of the
14 necessity for further discovery.”); *see also Lockheed Martin Corp.*, 194 F.3d at 986 (bad faith
15 supported denying a motion to amend where “[f]acing a summary judgment motion, [Plaintiff]
16 sought to amend its complaint to add causes of action on which discovery had not been
17 undertaken.”); *Pimental v. City of Hayward*, No. 14-cv-04706-JCS, 2016 WL 5930577, at *6
18 (N.D. Cal. Oct. 12, 2016) (“Because a motion for leave to amend is not a vehicle to circumvent
19 summary judgment, . . . a pending motion for summary judgment militates against granting a
20 motion to amend.”) (citation and brackets omitted).

21
22 Here, since the filing of Defendant’s Motion for Summary Judgment, Plaintiff has filed
23 eleven separate requests for judicial notice; a frivolous “Notice of Non-consent” challenging
24 the Chief Magistrate Judge’s authority to consider the Motion for Summary Judgment and issue
25 a Report and Recommendation; a letter to the District Judge arguing the same; and he failed to
26 file a timely opposition, requiring the Court to issue an Order to Show Cause re: Dismissal for
27 the failure to prosecute. (Dkt. Nos. 82, 89, 96, 99, 100, 102, 114, 157, 163, 171, 173, 174, 180,
28 186.) Plaintiff filed a letter directed at the Chief Magistrate Judge erroneously arguing that the

1 Order to Show Cause was “procedurally improper.” (Dkt. No. 106.) After the Court ordered
2 the letter stricken per the Court’s Local Rules, Plaintiff filed an interlocutory appeal in the
3 Ninth Circuit Court of Appeals. (Dkt. No. 108.) From there, Plaintiff filed another letter
4 directed at the presiding District Judge requesting that the Court sanction Defendant for
5 perceived discovery violations. (Dkt. No. 113.) Plaintiff then filed a motion to stay the case
6 pending appeal. (Dkt. Nos. 116.)

7
8 After filing his Opposition to the Motion for Summary Judgment, Plaintiff filed a
9 “Notice to Set Oral Arguments for MSJ” on the ground that Defendant had no deadline to file
10 a reply despite the fact that the Court had already vacated the hearing on the motion and set a
11 briefing schedule that included the reply. (Dkt. No. 83 at 1; Dkt. No. 122.) Plaintiff next
12 requested leave to file a sur-reply. (Dkt. No. 124.) Both requests were summarily denied by
13 Minute Order. (Dkt. No. 125 at 3-4.) Plaintiff next filed a “Speaking Declaration” arguing the
14 merits of his case. (Dkt. No. 126.) Plaintiff then re-filed his Motion to Stay Case pending his
15 interlocutory appeal, which was denied, as was his appeal to the Ninth Circuit. (Dkt. Nos. 116,
16 127, 149, 150.)

17
18 Undeterred, Plaintiff filed a Motion to Appoint Expert, which was denied. (Dkt. Nos.
19 133, 181.) He then filed a Motion for Costs, which the court denied. (Dkt. Nos. 137, 197.)
20 Plaintiff then filed an *ex parte* Application for Temporary Restraining Order, which was also
21 denied. (Dkt. Nos. 138, 145.) Next, Plaintiff filed another letter erroneously directed at the
22 presiding District Judge seeking an expedited status conference because of alleged changes in
23 the factual record. The District Judge summarily denied this filing as procedurally improper.
24 (Dkt. Nos. 151, 154.)

25
26 Plaintiff, in quixotic fashion, then filed a “Notice of Defendant’s Failure to File Court
27 Documents” one day after Defendant’s opposition to the Motion for Costs was due (the
28 opposition was filed the same day). (Dkt. Nos. 155, 156.) Plaintiff next filed a “Notice of

1 Supplemental Authority” related to the Motion for Summary Judgment, and then he requested
2 that the Court issue an order to show cause concerning Defendant’s alleged failure to meet and
3 confer concerning a contemplated motion for an expedited status conference. That request was
4 denied. (Dkt. Nos. 158, 160, 162.)

5
6 On May 15, 2024, the undersigned Chief Magistrate Judge issued a Report finding that
7 Defendant’s Motion for Summary Judgment should be granted in full and this action should be
8 dismissed with prejudice. (Dkt. No. 165.) After filing his Objection to the Report and a Reply
9 to Defendant’s response to his Objection (dkt. nos. 166, 169), Plaintiff then made a flurry of
10 filings, including a “Notice of Supplemental Authority & Request for Rule 201(e) Evidentiary
11 Hearing” (dkt. no. 170); a request to be referred to as “self-represented” instead of “*pro se*”
12 (dkt. no. 172); an untimely and legally frivolous request for a “Rule 16 Order,” which was
13 denied (dkt. nos. 178, 179, 187); and two additional notices of supplemental authority with one
14 requesting a “supplemental pleading,” that was also denied. (Dkt. Nos. 182-84, 187.) Plaintiff
15 then filed an *ex parte* application for a temporary restraining order (“TRO”), as well as a motion
16 to expedite hearing on the TRO, both were denied. (Dkt. No. 185, 192, 193, 195.)

17
18 Plaintiff filed the instant Motion to Amend on February 3, 2025, amid the flurry of other
19 filings and months after the objections period expired on the Report recommending that the
20 Motion for Summary Judgment be granted and this case be dismissed with prejudice. (Dkt.
21 No. 189.) On March 27, 2025, the presiding District Judge issued an Order Accepting Findings
22 and Recommendations of United States Magistrate Judge, which accepted and adopted the
23 findings in the Chief Magistrate Judge’s Report and granted Defendant’s Motion for Summary
24 Judgment in full. (Dkt. No. 198.) The Court delayed the entry of judgment “until the Motion
25 to Amend is decided.” (*Id.*)

26
27 The Court finds that the above filings include several frivolous motions and requests, all
28 made while the summary judgment motion was pending, and some of those motions and

1 requests were directly aimed at either preventing or delaying the summary judgment briefing
2 and decision. Furthermore, as detailed above, Plaintiff did not file the pending Motion to
3 Amend until well after the undersigned Chief Magistrate Judge issued a Report that
4 recommended summary judgment be granted in full. Moreover, as discussed above, the
5 proposed amended complaint does not allege that any actions occurred after the filing of the
6 Chief Magistrate Judge's Report, let alone after this lawsuit was filed in 2022.

7
8 Under the circumstances, the Court finds that the Motion to Amend was one of
9 numerous filings Plaintiff made to delay or prevent the entry of an adverse summary judgment
10 ruling. *Acri*, 781 F.2d at 1398-99; *Lockheed Martin Corp.*, 194 F.3d at 986; *Pimental*, 2016
11 WL 5930577 at *6. At the very least, ample evidence exists to indicate that the bad
12 faith/dilatory motive *Foman* factor does not weigh in favor of amendment. *Brown*, 953 F.3d
13 at 574; *Foman*, 371 U.S. at 182.

14
15 **III. Prejudice**

16
17 As Plaintiff argues in the Reply (dkt. no. 196 at 4), among the *Foman* factors, prejudice
18 to the opposing party carries the most weight. *Brown*, 953 F.3d at 574. But Plaintiff makes
19 this argument under the erroneous assumption that Defendant has failed to demonstrate that he
20 would suffer prejudice as the result of the requested late-hour amendment. (Dkt. No. 196 at 4.)
21 Not so.

22
23 First, given the strength of the other *Foman* factors that weigh against amendment, the
24 Court finds no presumption in favor of amendment here even if prejudice was not present. *See*
25 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("Absent
26 prejudice, **or a strong showing of any of the remaining *Foman* factors**, there exists a
27 presumption under Rule 15(a) in favor of granting leave to amend.") (emphasis added).
28 Second, here Defendant specifically argues that he would suffer prejudice if the Court allowed

1 an amendment to the Complaint “at this stage of litigation, nearly twenty seven months after
2 the original Complaint was filed, and while the parties are waiting for the Court’s ruling on
3 Defendant[’s] Motion for Summary Judgment.”² (Dkt. No. 194 at 5.) The Court, and the
4 law, agree with Defendant. *See Lockheed Martin Corp.*, 194 F.3d at 986 (“A need to reopen
5 discovery and therefore delay the proceedings supports a district court’s finding of prejudice
6 from a delayed motion to amend the complaint.”); *see also Taylor v. City and County of San*
7 *Francisco*, No. 22-16271, 2023 WL 3477836, at *1 (9th Cir. May 16, 2023) (“[Plaintiff] has
8 not demonstrated that he acted with diligence in moving to amend, and allowing a new theory
9 at this stage would likely require the defendants to engage in additional discovery after the fact
10 discovery period had closed.”); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir.
11 2000) (same); *Solomon v. North Am. Life & Cas. Ins. Co.*, 151 F.3d 1132, 1139 (9th Cir. 1998)
12 (same).

13
14 Contrary to Plaintiff’s contention that “this case has not even entered discovery,” the
15 case has not only “entered” discovery, but the discovery deadline expired on August 21, 2023.
16 (Dkt. No. 26 at 2.) Moreover, since Plaintiff filed this action in 2022, Defendant’s counsel has
17 been forced to respond a flurry of improper and unnecessary motions and filings. Finally, in
18 considering the Motion for Summary Judgment, Defendant thoroughly briefed the merits of
19 this case based on the claims and facts alleged in the Complaint. Under the circumstances, the
20 Court finds that winding this case all the way back to the beginning – particularly in light of
21 the other *Foman* factors that weigh against amendment – would greatly prejudice Defendant,
22 so this particular *Foman* factor also weighs heavily against the belated amendment of the
23 Complaint. *Lockheed Martin Corp.*, 194 F.3d at 986; *Taylor*, 2023 WL 3477836, at *1;
24 *Coleman*, 232 F.3d at 1295; *Solomon*, 151 F.3d at 1139; *Acri*, 781 F.2d at 1398-99.

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² Defendant filed the Opposition to Plaintiff’s Motion to Amend before the Court granted summary judgment in full.
(Dkt. Nos. 194, 198.)

1 **IV. Futility**

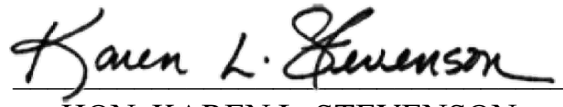
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3 Perhaps the strongest factor weighing against amendment here is futility, which “alone
4 can justify the denial of a motion for leave to amend.” *Nunes v. Ashcroft*, 375 F.3d 805, 808
5 (9th Cir. 2004). Indeed, the new theory on which Plaintiff seeks amendment – despite the
6 absence of any new factual development in the case – is essentially that, if there was not an
7 unconstitutional taking when Defendant denied Plaintiff’s solar farm application, there *was*
8 enough to constitute an unconstitutional taking when Plaintiff discovered that he was also
9 prohibited from building “residential and/or commercial structures on the property” or reside
10 on the land. (Dkt. No. 189-1 ¶¶ 32, 34, 38, 40.)

11
12 But Plaintiff’s new theory ignores the Court’s reasoning in finding that no taking
13 occurred and granting summary judgment. Specifically, the Court denied summary judgment
14 “based on evidence that the property had been subject to a publicly recorded restriction on
15 development since 1987, long before Brown acquired the property in 2020.” (Dkt. No. 198 at
16 2.) Further, the restrictions on the property that were at issue “were imposed by the County of
17 Los Angeles because the property was designated as an open space zone in a Significant
18 Ecological Area.” (Dkt. No. 165 (Report) at 28.) Such a designation would appear logically
19 to prohibit residential living or the building of structures on the subject property. There is,
20 therefore, no new theory in the proposed amended complaint that would have any material
21 effect on the Court’s summary judgment ruling, and as a result, the Court finds that allowing
22 the amendment would be futile. *See Klamath-Lake Pharmaceutical Ass’n v. Klamath Medical*
23 *Service Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (affirming the district court’s denial of a
24 motion to amend based on futility where “amendment . . . could not affect the outcome of this
25 lawsuit.”); *see also Nunes*, 375 F.3d at 808 (“[A] district court does not abuse its discretion in
26 denying a motion to amend a complaint . . . when the movant presented no new facts but only
27 new theories and provided no satisfactory explanation for his failure to fully develop his
28 contentions originally.”) (citation and internal quotation marks omitted).

1 **RECOMMENDATION**

2
3 For all of the foregoing reasons, IT IS RECOMMENDED that the District Judge issue
4 an Order: (1) accepting this Report and Recommendation; (2) denying Plaintiff's Motion to
5 Amend [Dkt. No. 189]; and (3) in conjunction with the Court's grant of summary judgment
6 on March 27, 2025 [Dkt. No. 198], entering Judgment DISMISSING this action WITH
7 PREJUDICE.

8
9
10 DATE: April 21, 2025

11 
12 HON. KAREN L. STEVENSON
13 CHIEF U.S. MAGISTRATE JUDGE
14
15
16

17 **NOTICE**

18
19 Reports and Recommendations are not appealable to the Court of Appeals but may be
20 subject to the right of any party to file objections as provided in the Local Rules Governing the
21 Duties of Magistrate Judges and review by the District Judge whose initials appear in the docket
22 number. No notice of appeal pursuant to the Federal Rules of Appellate Procedure should be
23 filed until entry of the judgment of the District Court.
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